

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

**ENBRIDGE ENERGY,
LIMITED PARTNERSHIP, *et al.*,**

Defendants.

Civil Action No.
1:16-cv-00914-GJQ-ESC

Judge Gordon J. Quist

**UNOPPOSED MOTION OF UNITED STATES
FOR ENTRY OF FIFTH MODIFICATION OF
CONSENT DECREE**

The United States of America, on behalf of the United States Environmental Protection Agency, moves for this Court to enter as a final judgment the proposed Fifth Modification of Consent Decree (“Modification”), which is attached as Exhibit 1 to the memorandum in support of this motion. In support of this motion, the United States states as follows:

1. On May 23, 2017, the Court approved and entered a Consent Decree resolving claims that the United States asserted against Enbridge Energy Limited Partnership and affiliated entities (“Enbridge”) in this action under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.* ECF 14, PageID.1565-1788. The Consent Decree requires Enbridge to implement various measures designed to improve its ability to prevent, detect, and respond to pipeline failures that could result in unlawful discharges of oil to

navigable waters of the United States or adjoining shorelines from any of 14 liquid petroleum pipelines that comprise Enbridge's Lakehead System.

2. Section VII.D of the Consent Decree requires Enbridge to implement an In-Line Inspection ("ILI") based spill prevention program that includes extensive measures for timely detection and evaluation of various types of features, such as cracks, corrosion, or dents, present on Lakehead System pipelines, as well as requirements to take timely and appropriate action in response to detected features that present potential threats of pipeline failures. *Id.* at PageID.1597-1641.

3. In addition to requiring periodic ILIs of Lakehead System pipelines, *see, e.g., id.* at PageID.1598 (Consent Decree ¶ 28), the Spill Prevention Program includes requirements to assure timely evaluation of information obtained during inspections. Thus the Consent Decree establishes requirements for timely submission of Initial ILI reports following completion of each ILI inspection, *id.* at PageID.1599-1600 (Consent Decree, ¶ 32), and deadlines to assure expeditious data quality review of ILI data. *id.* at PageID.1601-1604 (Consent Decree, ¶ 34) .

4. The Consent Decree also includes provisions assuring that Enbridge receives immediate notification, prior to submission of the Initial ILI Report, when certain features, referred to as "Priority Features," are detected by Lakehead System pipeline ILIs. *See* Consent Decree ¶ 33 and Appendix A, at PageID.1600, 1735.

5. The Spill Prevention Program in Section VII.D.(V) of the Consent Decree includes requirements and timelines for excavation and repair or mitigation of different types of features on Lakehead System pipelines that may present potential threats of pipeline failures ("dig selection criteria"), as well as interim pressure restriction requirements to reduce potential risks posed by certain features during the period prior to repair or mitigation of features that meet one or more dig selection criteria. *Id.* at PageID.1613-1641.

6. The dig selection criteria and pressure restriction requirements under the Consent Decree include requirements that focus specifically on distinct potential risks presented when different types of pipeline features intersect or interact with one another. *See id.* at PageID.1636-1639 (Consent Decree, ¶¶ 58 and 59 and Table 5). These provisions explicitly establish requirements applicable to “any” dent with any indication of metal loss, such as corrosion (hereinafter referred to as “dent/corrosion features”). *Id.*

7. A number of the dig selection criteria and pressure restriction requirements referred to in Paragraphs 2 – 4, above, are partly a function of the “Established Maximum Operating Pressure” (“MOP”) applicable to the location on a pipeline where a given feature is located. *See* Consent Decree at PageID.1582 (definition of MOP), *and see, e.g.*, PageID.1622, 1623, 1628-1632, and 1637-1639 (examples of substantive requirements that depend in part on MOP).

8. On May 7, 2020, the United States filed with the Court a proposed Modification of the Consent Decree that (1) modifies Enbridge’s obligations regarding intersecting dent/corrosion features, (2) clarifies the intended scope of one dig selection criterion in Table 4, (3) revises the definition of MOP in Paragraph 10.s to incorporate certain corrected MOP values, (4) revises application of the Priority Feature notification requirements with respect to features referred to as “ovalities,” and (5) revises related provisions of the Consent Decree to implement and conform to the foregoing changes. ECF 24, PageID.2001-2044.

9. The proposed Modification includes material changes that are subject to approval by the Court in accordance with Paragraph 201 of the Consent Decree. ECF 24, PageID.2005, and ECF 14 at PageID.1723-1724.

10. By its terms the proposed Modification is subject to public notice and an opportunity for submission of public comments in accordance with 28 C.F.R. § 50.7. ECF 24, PageID.2025. In that same provision, the United States reserved the right to withdraw or withhold its consent to the

proposed Modification if comments disclose facts or considerations that indicate that the proposed Modification is improper, inappropriate, or inadequate. *Id.*

11. The United States published notice of the proposed Modification in the Federal Register on May 13, 2020. 85 Fed. Reg. 28,984 (May 14, 2020).

12. The United States received no public comments during the thirty day comment period, which ended on June 15, 2020. The United States does not withdraw its consent to the terms of the proposed Modification.

13. As discussed in more detail in the memorandum in support of this motion, the proposed Modification is fair, reasonable, adequate and consistent with the public interest. The proposed Modification provides for Enbridge to evaluate all dent/corrosion features on Lakehead System pipelines using methodologies that were developed and validated subsequent to entry of the Consent Decree. The new methodologies provide a reliable basis for identifying which detected dent/corrosion features present sufficient risk to warrant excavation, repair or mitigation, and imposition of interim point pressure restrictions. The proposed Modification also corrects certain erroneous MOP values originally established by Enbridge based on certain information later determined to be incorrect, based on results of a data quality review program completed by Enbridge following entry of the Consent Decree. Finally the proposed Modification revises or corrects a couple of minor errors or omissions that could affect interpretation of a couple of provisions of the Consent Decree.

WHEREFORE, the United States respectfully requests that the Court grant this motion and sign and enter the proposed Fifth Modification of Consent Decree, a copy of which is attached as Exhibit 1 to the Memorandum in support of this motion, as a final judgment.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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